

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION FIVE

PERFORMANCE FOOD GROUP d/b/a
VIRGINIA FOOD SERVICE, INC.
Employer

and

Case 5-RC-15503

UNITED FOOD AND COMMERCIAL WORKERS
UNION, LOCAL 400, AFL-CIO-CLC
Petitioner

DECISION AND DIRECTION OF ELECTION

The sole issue raised at the hearing involves the supervisory status of day shift supervisor Charles Green. The Employer contended Green is a supervisor within the meaning of Section 2(11) of the Act, and the Petitioner agreed. The Employer, however, seeks a formal determination of this issue because it believes the issue is a “close call.”

The Employer is a Virginia corporation engaged in food distribution services from its office and place of business in Richmond, Virginia. The parties stipulated that the petitioned-for unit of approximately 37 warehouse employees¹ is an appropriate unit for bargaining. The parties further stipulated that president and CEO Graylon MacFall, vice-president of operations John Teixeira, and director of operations Norman West are managerial employees properly excluded from the unit; that supervisors Robert Salo and Lee Redman are statutory supervisors who have the authority to hire and fire, or to effectively recommend those actions; and that shift supervisors Gerald Martin, Maurio Bailey, and Randy Hill are statutory supervisors who direct the workforce.

In support of its contention that day shift supervisor Green is a statutory supervisor, the Employer presented as its witness vice-president of operations Teixeira. Teixeira testified that Green directs the three forklift operators working on the freezer dock, assigning them to be responsible for particular loads coming in specific warehouse doors, prioritizing their work, and authorizing them to work overtime. Teixeira further testified that Green possesses the authority to recommend discipline of the forklift operators on the freezer dock, and attends weekly management meetings held to review operating results.

¹ The unit consists of: “All full-time and regular part-time employees at the Employer’s Richmond, Virginia distribution center, including auditors, quality control auditors, inventory control auditors, selectors, high-rise selectors, will-call selectors, loaders, forklift drivers, high-rise lift operators, receivers, and building sanitation employees, but excluding all other employees, including clerks, building maintenance, sales, supervisors, managers, and guards as defined in the Act.”

Teixeira was the sole witness at the hearing, and thus his testimony stands without contradiction. Given the parties' mutual agreement that Green is a statutory supervisor, I find Teixeira's testimony to be a sufficient factual predicate on which to find, in agreement with the position expressed by both the Employer and the Petitioner, that Green properly is excluded from the appropriate unit as a supervisor as defined in Section 2(11) of the Act.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accord with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Sections 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner, United Food and Commercial Workers Union, Local 400, AFL-CIO-CLC, a labor organization as defined in Section 2(5) of the Act, claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.
5. The parties stipulated that the Employer, a Virginia corporation with an office and place of business in Richmond, Virginia, is engaged in food distribution services. During the past 12 months, a representative period, the Employer sold and shipped from its Richmond, Virginia facility goods valued in excess of \$50,000 directly to points located outside the State of Virginia.
6. The parties stipulated that the following individuals are managers of the Employer and therefore excluded from the unit: Graylon MacFall; John Teixeira; and Norman West.
7. The parties stipulated that the following employees are supervisors within the meaning of Section 2(11) of the Act and are excluded from the unit: Robert Salo; Lee Redman; Gerald Martin; Maurio Bailey; and Randy Hill.
8. The parties agreed, and I find, that Charles Green is a supervisor within the meaning of Section 2(11) of the Act and is excluded from the unit.

9. I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees at the Employer's Richmond, Virginia distribution center, including auditors, quality control auditors, inventory control auditors, selectors, high-rise selectors, will-call selectors, loaders, forklift drivers, high-rise lift operators, receivers, and building sanitation employees; but excluding all other employees, including clerks, building maintenance, sales, supervisors, managers, and guards as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 400, AFL-CIO-CLC**. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, 103 South Gay Street, Baltimore, MD 21202, on or before **DECEMBER 31, 2002**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (410) 962-2198. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **JANUARY 7, 2003**. The request may not be filed by facsimile.

(SEAL)

/S/WAYNE R. GOLD

Dated: DECEMBER 24, 2002

Wayne R. Gold, Regional Director
National Labor Relations Board
Region 5

